IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.13448 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2	To be referred to the Reporter or not ?	**NO**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5	Whether it is to be circulated to the civil judge ?	**NO**

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SURAT JILLA UTTAR-PURVA VIBHAG SAHAKARI KHAND UDYOG MANDALI LIMITED - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR BHARAT T RAO for Petitioner(s) : 1,
MR KRUNAL D. PANDYA, AGP for Respondent(s) : 1-2
DS AFF.NOT FILED (N) for Respondent(s) : 3.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 05/07/2007

ORAL JUDGMENT

(1) The petition was originally filed praying for the following reliefs.

“48.Taking into consideration the above grounds and others that may be urged at the time of hearing, this Hon'ble Court may

kindly be pleased:-

A) To issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction which the Hon'ble Court may deem fit, just and proper directing the respondent No.2 to hand over the administration of Surat Jilla Uttar-Purva Vibhag Sahakari Khand Udyog Mandali Ltd. to Shri Anilkumar M. Patel, its Chairman and the names proposed by him vide letter dt. 23.4.2007 as after winding up order has been aside by the Government the respondent No.2 has no authority to withhold the administration with the liquidator which is against the provisions of law.

B) To issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction restraining the respondent No.2 from handing over the administration of Surat Jilla Uttar-Purva Vibhag Sahakari Khand Udyog Mandali Ltd. to Shri Sahdevbhai Chaudhary or the name proposed by Shri Mansingbhai Patel directly to the Hon'ble Minister on 13.5.2007 as the members of the Society do not want Shri Sahdevbhai Chaudhary and Shri Mansingbhai Patel to exercise control over the petitioner society with the help of government

machinery.

C) To issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction restraining the respondent No.2 from calling Extra-Ordinary General Meeting of the Surat Jilla Uttar-Purva Vibhag Sahakari Khand Udyog Mandali Ltd. in the Chairmanship of the name proposed by Shri Mansingbhai Patel or Shri Lallubhai Keshavbhai Chaudhary who is defaulter of the Ukai Pradesh Asargrast Khand Udyog Sahakari Mandali which has gone into liquidation and he was the Vice Chairman of the said society and the petitioner society and he is defaulter of the said society for the reasons stated in the Memo of the Petition.

D) To issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction restraining the respondent Nos.1 & 2 from interfering in the administration of Surat Jilla Uttar-Purva Vibhag Sahakari Khand Udyog Mandali Ltd. for a period of six months so that the present body of the petitioner society proposed by Shri Anilkumar M. Patel the Chairman can fulfill the commitment made before the government for setting up sugar industry

for the reasons stated in the Memo of Petition.

E) Pending admission, hearing and final disposal of the above Special Civil Application to direct the respondent No.2 to hand over the administration of Surat Jilla Uttar-Purva Vibhag Sahakari Khand Udyog Mandali Ltd. to Shri Anilkumar M. Patel, M.L.A., Bardoli who is its Chairman and further be pleased to restrain the respondents from interfering or handing over the administration of Surat Jilla Uttar-Purva Vibhag Sahakari Khand Udyog Mandali Ltd. to Shri Sahdevbhai Chaudhary or any other person for the reasons stated in the memo of petition.

F) The Hon'ble Court may kindly be pleased to grant any other appropriate relief as the nature circumstances of the case may require."

(2) Subsequently, by amendment, the following prayer was added:

"EE Pending hearing and final disposal of this petition, implementation and execution of order passed by Respondent No.2, director of Sugar dated 24.05.2007 (at Page-76-Annex R-2) produced along with

affidavit-in-reply, be stayed for the reason stated in the memo of petition."

(3) On 24.05.2007 when the petition was taken up for hearing by the Court the following order came to be made:

> "Heard, Mr.B.T.Rao, learned advocate for the petitioner. **Notice** returnable on 5th June, 2007. By way of Ad-interim relief, the respondents are restrained from handing over the administration of the petitioner society to any person. Direct service is permitted today."

(4) Subsequently, on 05.06.2007 affidavit-in-reply was filed by respondent No.2 and taking note of the same the Court permitted the petitioner to amend prayer clause which is reflected by the aforesaid prayer 'EE' as reproduced hereinbefore.

(5) Heard learned advocate for the petitioner and the learned Assistant Government Pleader.

(6) The facts reveal that on 02.02.2007 respondent

No.2 made an order in exercise of powers under Section 107(3) of the Gujarat Co-operative Societies Act, 1961 (the Act) whereunder the Managing Board of Surat Jilla Uttar-Purva Vibhag Sahakari Khand Udyog Mandali Limited was removed and a liquidator came to be appointed. The matter was challenged in appeal by way of Revision Application No.20 of 2007 by the petitioner describing himself as president of the co-operative society along with three others. On 04.04.2007 the appellate authority accepted the revision application partly and set aside the order dated 02.02.2007 with a further direction to decide the case after granting a reasonable opportunity of hearing to the applicants before the appellate authority. It is further directed that in the event the applicants, after representing their case are not in a position to form a managing board and revive the society within a period of six months, it will be open to the respondent authority to pass a final order of liquidation.

(7) Subsequent -thereto it appears that vide representation dated 23.04.2007 the petitioner along with a list of 15 members called upon respondent authority to appoint them as the members of the managing board. On 24.05.2007 the respondent has passed an order vide Reference No.Fadach/01/K/874/07 dissolving the existing Managing Board. On the same day, i.e. on 24.05.2007 another order bearing Reference No.Fadach/01/K/875/07 came to be passed wherein respondent authority has, in exercise of powers under Section 78 of the Act, directed the liquidator and the District Registrar, Surat to call a general body meeting within 30 days of the order.

(8) The learned Assistant Government Pleader states that the second order dated 24.05.2007 bearing Reference No.Fadach/01/K/875/07 shall be withdrawn and the respondent authority shall pass a fresh order in exercise of powers

under bye-law No.21 of the Society to constitute managing board.

(9) In light of the aforesaid statement no further directions are required to be made. Respondent authority shall comply with the directions given by the Appellate Authority at the earliest considering the time frame stipulated by the Appellate Authority.

(10) The petition is accordingly disposed of. RULE discharged. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*